

DEPARTMENT OF ADMINISTRATION
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Sub-Chapter 1

Special Purchasing Activities

2.5.101 DEFINITIONS (IS HEREBY REPEALED) (History: Sec. 18-4-101 MCA; IMP, Title 18, chapter 4 MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.102 REQUISITION TIME SCHEDULE (IS HEREBY REPEALED) (History: Sec. 18-4-101 MCA; IMP, Title 18, chapter 4 MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.103 REQUISITIONING PROCEDURES (PREPARATION AND SUBMISSION) (IS HEREBY REPEALED) (History: Sec. 18-4-101 MCA; IMP, Title 18, chapter 4, MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.104 AGENCY PURCHASING AUTHORITY (IS HEREBY REPEALED) (History: Sec. 18-4-101 MCA; IMP, Title 18, chapter 4 MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.105 TERM CONTRACTS (IS HEREBY REPEALED) (History: Sec. 18-4-101 MCA; IMP, Title 18, chapter 4 MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.106 BID LIST (IS HEREBY REPEALED) (History: Sec. 18-4-101 MCA; IMP, Title 18, chapter 4 MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.107 BID PREPARATION (IS HEREBY REPEALED) (History: Sec. 18-4-101 MCA; IMP, Title 18, chapter 4 MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.108 SOLICITATION OF BIDS (IS HEREBY REPEALED) (History: Sec. 18-4-101 MCA; IMP, Title 18, chapter 4 MCA, NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.109 AWARDING OF CONTRACTS (IS HEREBY REPEALED) (History: Sec. 18-4-101 MCA; IMP, Title 18, chapter 4 MCA, NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.110 RECORDS OF BIDS (IS HEREBY REPEALED) (History: Sec. 18-4-101 MCA; IMP, Title 18, chapter 4 MCA, NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.111 QUALITY CONTROL - RECEIPT AND INSPECTION (IS HEREBY REPEALED) (History: Sec. 18-4-101 MCA; IMP, Title 18, chapter 4 MCA, NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.112 NONPERFORMANCE BY VENDOR (IS HEREBY REPEALED) (History: Sec. 18-1-402 MCA; IMP, 18-1-402 MCA, NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1981 MAR p. 202, Eff. 3/13/81.)

2.5.113 NONPERFORMANCE BY STATE (IS HEREBY REPEALED) (History: Sec. 18-1-402 MCA; IMP, 18-1-402 MCA, NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1981 MAR p. 220, Eff. 3/13/81.)

2.5.114 JOINT GOVERNMENTAL PURCHASE (IS HEREBY REPEALED) (History: Sec. 18-4-101 MCA; IMP, Title 18, chapter 4 MCA, NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.115 NEGOTIATED REHABILITATION CONTRACTS (IS HEREBY REPEALED) (History: Sec. 18-5-102 MCA; IMP, 18-5-101 through 18-5-103 MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.116 REFERENCED FORMS (IS HEREBY REPEALED) (History: Sec. 18-4-101 MCA; IMP, Title 18, chapter 4 MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.117 TRANSFER OF CONTRACTS OR COLLUSION - ADDITIONAL PENALTIES (IS HEREBY REPEALED) (History: Sec. 18-4-101 MCA; IMP, Title 18, chapter 4 MCA; NEW, Eff. 12/31/72; TRANS, Eff. 11/30/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.118 MONTANA SMALL BUSINESS PURCHASING ACT (IS HEREBY REPEALED) (History: Secs. 18-4-101 and 18-5-304 MCA; IMP, Title 18, chapter 5, part 3 MCA; NEW, Eff. 6/17/74; TRANS, Eff. 11/30/78, AMD, 1990 MAR p. 1770, Eff. 9/14/90; REP, 1995 MAR p. 2241, Eff. 11/1/95.)

2.5.119 STUDENT ASSOCIATION PROCUREMENT EXEMPTION

(1) Student associations of the university system are exempt from state laws relating to procurement of supplies and services and disposal or sale of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system. This includes private consultants employed by the student association of the university system with money raised from student activity fees designated for use by those student associations. (History: Sec. 18-4-221 MCA; IMP, Sec. 18-4-132 MCA; NEW, 1990 MAR p. 1770, Eff. 9/14/90.)

Sub-Chapter 2

Regulation of Procurement Activities

2.5.201 DEFINITIONS In these rules, words and terms defined in Title 18, chapter 4, MCA, shall have the same meaning as in the statutes and, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Agency" means an agency, bureau, commission, committee, council, department, governmental corporation, institution, legislative body, or other entity, instrumentality, or official of the executive, legislative or judicial branch of the state, including the board of regents and the Montana university system.

(2) "Advantageous" means a judgmental assessment of what is in the state's best interest.

(3) "Bid sample" means a sample to be furnished by a bidder to show the characteristics and/or quality of the item offered in the bid.

(4) "Brand name specification" means a specification that cites a brand name, model number, or some other designation that identifies a specific product as an example of the desired characteristics and/or quality of merchandise.

(5) "Central stores" means the proprietary program operated by the division which develops standard specifications, procures, warehouses and delivers certain supplies for state agencies. The bureau also operates the state and federal surplus programs for eligible donees.

(6) "Competitive bidding" means the offering of prices by individuals or firms competing for a contract to supply specified services or merchandise.

(7) "Controlled items" means those supplies and services identified by the division as commonly used items which, when consolidated for purchasing purposes, result in volume adequate to obtain discounted prices.

(8) "Days" mean calendar days. In computing any period of time prescribed or allowed by these rules, the day of the event after which the designated period of time begins to run is not to be included, but the last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next business day.

(9) "Department" means the department of administration.

(10) "Descriptive literature" means information available in the ordinary course of business which shows the characteristics, construction, or operations of an item and enables the state to consider whether the item meets its needs.

(11) "Division" means the procurement and printing division of the department of administration.

(12) "Exigency" means a purchase made without following normal purchasing procedures due to a sudden and unexpected happening or unforeseen occurrence or condition which requires immediate action.

(13) "FOB or f.o.b." means free on board; a term used in conjunction with an identified physical location to determine:

(a) the responsibility and basis for payment of freight charges and;

(b) the point at which title for the shipment passes from seller to buyer. Deliveries are usually FOB destination which means a shipment is to be delivered to the destination designated by the buyers.

(14) "Montana-made" means manufactured or produced in the state and made with the use of parts, material, or supplies of which 50% or more were manufactured or produced in this state; or employment of persons of whom 50% or more are bona fide residents of Montana as defined in 18-2-401, MCA.

(15) "Non-resident bidder" means a bidder whose residence is not in this state as determined under 18-1-103, MCA.

(16) "Offer" means proposal. "Offeror" means a person submitting a proposal when a procurement is made by a source selection method other than competitive sealed bidding.

(17) "Office supply" means an item included under the office supply commodity class codes (#610, 615 and 620) maintained by the division. In the Central Stores Product Catalog, the inventory codes for these supplies are all items with prefixes beginning with the following numbers: 7001 through 7704, 7802 through 7904, 7907 and 9513.

(18) "Property and supply bureau" means the bureau of the division which is responsible for the central stores program and for operating the state and federal surplus programs for eligible donees.

(19) "Publications and graphics bureau" means that bureau of the division responsible for supervising and attending to all public printing of the state.

(20) "Purchase order" means a document used to formalize a purchase contract with a vendor.

(21) "Purchasing bureau" means that bureau of the division responsible for procuring or supervising the procurement of all supplies and services needed by the state excluding those services procured by the property and supply bureau and publications and graphics bureau.

(22) "Requisition" means the document used to request that a contract be entered into for a specific need, and may include, but is not limited to, the description of the requested item, delivery schedule, transportation data, criteria for evaluation, suggested sources of supply, and information supplied for the

making of any written determination required by Title 18, chapter 4, MCA or these rules.

(23) "Requisition time schedule" means a schedule issued by the purchasing bureau each year which designates the dates by which certain categories of controlled items must be requested from the bureau.

(24) "Resident bidder" means a bidder that meets the requirements of 18-1-103, MCA.

(25) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.

(26) "Responsive bidder or offeror" means a person who has submitted a bid or offer which conforms in all material respects to the invitation for bids or request for proposals.

(27) "Restrictive specification" means specifications that unnecessarily limit competition by eliminating supplies and services that would be capable of satisfactorily meeting actual needs.

(28) "Solicitation" means an invitation for bid, a request for proposal, or any other document issued by the state for the purpose of soliciting bids or proposals to enter into a state contract.

(29) "Specifications" means a detailed description of what the purchaser requires and what a bidder must offer to be considered for an award.

(30) "Surplus supplies" are supplies no longer needed by an agency for its use in the discharge of its duties and responsibilities, excluding books.

(31) "Term contract" means a contract in which supplies or services are offered at a predetermined unit price for a specific period of time.

(32) "Unit price" means the price of a selected unit of a supply or services; e.g., price per ton, foot, box.

(33) "Vendor" means a seller of supplies or services.

(34) "Vendors list" means a list maintained by the division listing the names and addresses of suppliers of various goods and services from whom bids or proposals can be solicited. (History: Sec. 18-1-114 and 18-4-221, MCA; IMP, Sec. 18-4-221 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1985 MAR p. 244, Eff. 3/15/85; AMD, 1987 MAR p. 1961, Eff. 10/30/87; AMD, 1987 MAR p. 2144, Eff. 11/28/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 2814, Eff. 10/28/94; AMD, 1995 MAR p. 2241, Eff. 11/1/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97.)

2.5.202 DEPARTMENT OF ADMINISTRATION RESPONSIBILITIES

(1) The department is responsible for all procurements of all state supplies and services. All activities, including procedures, manuals, and forms, which govern such procurements will be prepared by or under the supervision of the department.

(2) The department's procurement and printing division will establish a vendors list, determine eligibility for residence preference of vendors for purchases made under Title 18, chapter 4, MCA, investigate complaints against vendors, and remove vendors from the state list as described in ARM 2.5.401, 2.5.402, 2.5.403, and 2.5.407.

(3) The department's procurement and printing division shall process requisitions for agencies, for items not delegated, in accordance with ARM 2.5.302.

(4) Except as indicated in ARM 2.5.301 the department's procurement and printing division will identify and purchase all controlled items.

(5) The department is responsible for the review and approval of the following equipment or service procurements regardless of delegated authority:

(a) all printing-related equipment involving duplicating, printing, bindery, and graphic arts for state agencies within a 10-mile radius of the capitol area -- approval by the publications and graphics bureau is required.

(b) data processing equipment, software and contracts-- approval by the information services division is required, except as provided in 2-17-501, MCA.

(c) communications equipment--approval by information services division is required.

(d) mail equipment within a 10-mile radius of the capitol area--approval by the procurement and printing division is required.

(6) Delegation of authority.

(a) Except for controlled items, authority is hereby delegated to all agencies for the procurement of supplies and services of \$5,000 or less.

(b) The department's procurement and printing division may delegate to agencies, authority to purchase supplies and services greater than \$5,000. The division may also revoke this authority. Factors to be considered in making the decision to delegate include:

(i) the expertise of the potential delegate in terms of procurement knowledge and any specialized knowledge pertinent to the authority to be delegated;

(ii) the past experience of the potential delegate in exercising similar authority;

(iii) the degree of economy and efficiency to be achieved in meeting the state's requirements if authority is delegated; and

(iv) the consistency of delegation under similar circumstances.

(c) Delegation greater than \$5,000 will be given through a written delegation agreement with the purchasing bureau. The written delegation shall specify:

(i) the activity or function authorized;

(ii) any limits or restrictions on the exercise of the delegated authority;

(iii) whether the authority may be further delegated; and

(iv) the duration of the delegation.

(d) The department's procurement and printing division will provide training to agencies on purchasing in accordance with delegated responsibilities.

(e) The department's procurement and printing division may perform reviews of agency purchasing procedures to insure compliance with the delegation agreement, these rules and Title 18, chapter 4, MCA.

(7) The department's property and supply bureau will dispose of, or supervise the disposal of, all surplus supplies belonging to the state as provided in ARM 2.5.701 and 2.5.702. (History: Sec. 18-4-221 MCA; IMP, Sec. 2-17-301, 2-17-302, 18-4-221 and 18-4-222 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1985 MAR p. 244, Eff. 3/15/85; AMD, 1987 MAR p. 2144, Eff. 11/28/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 383, Eff. 2/25/94; AMD, 1995 MAR p. 1788, Eff. 9/15/95; AMD, 1995 MAR p. 2241, Eff. 11/1/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97.)

Sub-Chapter 3

Procedures for Using Agencies

2.5.301 DELEGATION OF PURCHASING AUTHORITY (1) Agencies may exercise authority to purchase non-controlled items of \$5,000 or less. Agencies may exercise delegated purchasing authority greater than \$5,000 and for exigency purchases in accordance with written delegation agreements described in ARM 2.5.202, with the Montana Procurement Act and with these rules.

(2) Unless specifically addressed in a delegation agreement, agencies must buy controlled items through the division except office supply items (as defined in ARM 2.5.201) supplied by central stores. These items may be purchased directly from vendors if the vendor's price is a publicly advertised price, established catalog price, or discount price offered to the purchasing agency and is less than the price available from the central stores program and the specifications, terms, conditions, and delivery of these items meet or exceed the central stores program.

(3) Delegation and competitive procedures are not necessary for the following purchases: salaries; fees for those professions exempted by 18-4-132, MCA; travel and per diem; insurance; retirement and social security payments; freight; landfill charges; supplies or services whose prices are regulated by the public service commission or other governmental authority; training; training and conference space rental and catering; and fresh fruits and vegetables. (History: Sec. 18-4-221, MCA; IMP, Sec. 18-4-221, 18-4-222 and 18-4-302, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1985 MAR p. 244, Eff. 3/15/85; AMD, 1986 MAR p. 242, Eff. 2/28/86; AMD, 1987 MAR p. 1961, Eff. 10/30/87; AMD, 1987 MAR p. 2144, Eff. 11/28/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 383, Eff. 2/25/94; AMD, 1994 MAR p. 2814, Eff. 10/28/94; AMD, 1995 MAR p. 2241, Eff. 11/1/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97.)

2.5.302 REQUISITIONS FROM THE AGENCIES TO THE DIVISION

(1) All agencies must complete the division's requisition form when a state purchase order is required from the division (see ARM 2.5.301). The requisition must be signed or electronically approved by an authorized agency official. Only items of a like nature (items ordinarily procurable from the same vendor) to be billed to one location shall be combined on one requisition. A separate requisition is required for each billing location. The requisition must be accompanied by specifications as described in ARM 2.5.501. Completed requisitions for coarse paper, computer paper, computer software supported by information systems division, fine paper, forms,

flags, fire extinguishers, janitorial supplies, and office supplies shall be forwarded to the property and supply bureau; requisitions for printing shall be forwarded to publications and graphics bureau. Completed requisitions for supplies and services (not listed above) shall be forwarded to the purchasing bureau.

(2) Agencies must obtain written approval as required for equipment described in ARM 2.5.202(5). Written approval must accompany the requisition.

(3) Upon receipt of a requisition, the division will initiate and schedule the solicitation. The division will send a copy of the solicitation to the requesting agency for review prior to bid opening.

(4) The division may cancel a requisition if deemed appropriate for reasons such as, but not limited to, the following. The requisition:

- (a) does not contain sufficient specifications;
- (b) cannot be processed in a timely manner;
- (c) has no evidence of approvals required in (2) above; or
- (d) does not comply with all requirements of these rules.

(5) Requisitions for supplies and services to be purchased with funds from a given fiscal year must be submitted to the procurement and printing division by May 1 of that fiscal year. (History: Sec. 18-4-221 MCA; IMP, Sec. 18-4-221 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1985 MAR p. 244, Eff. 3/15/85; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 383, Eff. 2/25/94; AMD, 1994 MAR p. 2814, Eff. 10/28/94; AMD, 1997 MAR p. 1816, Eff. 10/7/97.)

2.5.303 ENFORCING THE CONTRACT (1) Except for items purchased and warehoused by the division's central stores program, agencies are responsible for receiving supplies and services procured on their behalf by the department. Receiving means inspecting the supply or service and checking it against the contract to insure that it is acceptable, complete and in compliance with the terms of the contract.

(2) Agencies should submit complaints about vendor performance to the division. The division will investigate complaints and attempt to resolve the problem to the agency's satisfaction. The division will notify the complaining agency of any action taken as a result of the complaint.

(3) The state of Montana reserves the right to assess liquidated damages for failing to comply with delivery requirements indicated in the bid proposal. This sum may be deducted from vendor payment for failure to deliver when specified. Liquidated damages should not be punitive and should only be used where it is difficult to determine actual damages at the time of contracting. No premium will be awarded to the

vendor for delivery in advance of the specified time.
(History: Sec. 18-4-221 MCA; IMP, Sec. 18-4-221 MCA; NEW, 1983
MAR p. 1918, Eff. 12/30/83; AMD, 1990 MAR p. 1770,
Eff. 9/14/90.)

Sub-Chapter 4

Procedures for Vendors

2.5.401 VENDORS LIST (1) The procurement and printing division maintains a vendors list for all supply and service commodities. Names and addresses on the vendors lists shall be available for public inspection but these lists shall not be used for private promotional, commercial or market purposes.

(2) To get on the vendors list, a vendor must register with the division on a form supplied by the division, including information sufficient to identify proper commodity(ies) on which the vendor wishes to bid. Registration forms are available from the procurement and printing division. (History: Sec. 18-4-221 MCA; IMP, Sec. 18-4-221 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1985 MAR p. 244, Eff. 3/15/85; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1995 MAR p. 2241, Eff. 11/1/95; AMD, 1997 MAR p. 193, Eff. 1/28/97.)

2.5.402 SUSPENSION OR REMOVAL FROM VENDORS LIST (1) The division has the authority to suspend or remove a vendor from the vendors list if the division determines the vendor:

(a) has falsely submitted an affidavit for preference; or
(b) is not a responsible or responsive vendor as defined in 18-4-301, MCA and ARM 2.5.201 and 2.5.407.

(2) The division may suspend a vendor from the vendors list upon written determination by the division that probable cause exists for suspension under 18-1-113 and 18-4-241, MCA. A notice of suspension, including a copy of the determination, shall be sent to the affected vendor. The notice must state that:

(a) the suspension is for the period it takes to complete an investigation into possible removal;

(b) bids or proposals will not be accepted from the suspended vendor during the period of suspension; and

(c) the suspended vendor may request a redetermination.

(d) Suspension is effective upon the notice of suspension and, unless the suspension is terminated by the division or a court, it will remain in effect until its expiration date.

(3) The division may remove a vendor from the vendors list for cause:

(a) upon written determination by the division that cause exists under 18-1-113 and 18-4-241, MCA.

(b) the division shall prepare a written decision regarding a removal and send a copy to the affected vendor. The decision shall: recite the facts relied upon; indicate the term of the removal; indicate the reasons for the action, and to what extent affiliates are affected.

(c) removal is effective upon issuance and remains effective until its expiration date unless otherwise terminated.

(4) The division may remove a vendor from the vendors list for failure to respond to invitation for bids or proposals on three consecutive solicitations of those items. Prospective bidders and offerors may be reinstated on such lists as described in ARM 2.5.401.

(5) The department shall maintain a list of vendors removed or suspended from the vendors list. The list shall be available to all state agencies and the public upon request. (History: Sec. 18-4-221 MCA; IMP, Sec. 18-4-241 and 18-4-308 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1987 MAR p. 1961, Eff. 10/30/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1995 MAR p. 2241, Eff. 11/1/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97.)

2.5.403 BIDDING PREFERENCES (1) Montana resident and Montana-made preferences, as required in 18-1-102 and 18-1-112, MCA, must be applied by a public agency when awarding contracts for supplies except in the following instances:

(a) procurements using the competitive sealed proposal process (request for proposal) as defined in 18-4-304, MCA and ARM 2.5.602;

(b) small purchases or limited solicitations as defined in 18-4-305, MCA and ARM 2.5.603;

(c) cooperative purchasing as defined in 18-4-401, MCA;

(d) procurements involving services as defined in 18-4-123, MCA; or

(e) procurements involving funds obtained from the federal government, including term contracts, except in those cases where applicable federal statutes expressly mandate geographic preference.

(2) To assess eligibility, the department requires vendors to apply for preference by completing the applicable sections of the bidder affidavit form described in 18-1-113, MCA. The affidavit must be on file with the division at the time of bid opening, or be submitted with the bid to be considered for preference eligibility. Vendors who submit inaccurate information on this form may be subject to the provisions of ARM 2.5.402.

(3) A third preference, as required in 18-7-107, MCA, must be applied to all state printing, binding, and stationery work. (History: Sec. 18-1-114 and 18-4-221 MCA; IMP, Sec. 18-4-221 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1987 MAR p. 1961, Eff. 10/30/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 2814, Eff. 10/28/94; AMD, 1995 MAR p. 1931, Eff. 9/29/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97.)

2.5.404 BID PREPARATION (1) Any exceptions to the bid or specifications on the part of the bidder must be clearly indicated. Exceptions may be rejected.

(2) Each item on which a bidder submits a quotation must be new and unused and of the latest model or manufacture unless otherwise specified by the state. It shall be equal in quality and performance characteristics to that indicated in the Invitation for Bid.

(3) The price for each item must be stated in the bid and shall be clearly shown in the space provided on the bid form. Only one unit price shall be shown for each item unless specific provision is made in the bid form for an optional figure. The price of each item shall be extended to show the total price for the quantity requested. In case of error in extension, the unit price shall prevail.

(4) Item-by-item unit price bids must be submitted and will receive primary consideration for award. All-or-none bids may be submitted as alternatives and will be considered if clearly in the best interest of the state.

(5) Payment will be due 30 days from:

(a) the receipt of a properly executed claim; or
(b) upon satisfactory receipt of the merchandise or service, whichever is later.

(6) Vendors may quote a cash discount based on early payment; however such discounts will not be considered in determination of low bid and payment terms will remain as in (5) above.

(7) Vendors will offer a firm price for 30 days after a bid opening, pending award, unless otherwise provided for in the invitation for bids.

(8) Unless otherwise specified in the invitation for bids or request for proposals, all bids and proposals shall show the delivered price FOB destination to the agency, including all transportation and handling charges. (History: Sec. 18-4-221 MCA; IMP, Sec. 18-4-221 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 2814, Eff. 10/28/94; AMD, 1997 MAR p. 193, Eff. 1/28/97; AMD, 1997 MAR p. 1816, Eff. 10/7/97.)

2.5.405 BLIND VENDORS' BIDDING PREFERENCE (1) A blind person wishing to claim the vending facility preference must complete the determination form provided by the purchasing bureau. The form must be completed by an ophthalmologist, physician skilled in diseases of the eye or a state of Montana, department of public health and human services, visual services counselor.

(2) A determination form shall be submitted with each

individual bid. The determination form shall be valid for six months. At the end of the six month period, a new determination form will be required or submitted with bids. A new determination form will be required for renewal of a contract if the contract renewal date exceeds six months from the completion date of the original determination form. (History: Sec. 18-5-501 MCA; IMP, Sec. 18-5-501 MCA; NEW, 1987 MAR p. 250, Eff. 3/31/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90.)

2.5.406 VENDOR PROTEST (1) Except for small purchases or limited solicitations made pursuant to 18-4-305, MCA, a bidder, offeror, or contractor aggrieved in connection with the solicitation, award, or administration of a contract may protest to the department. Protests involving a solicitation or award must follow the provisions of 18-4-242, MCA.

(2) In the event the protest concerns the administration of an existing contract, the protesting party must follow the protest procedure set out in the contract. If there is no procedure stated in the contract, the protesting party must submit a protest in writing no later than 14 days after the cause of action, question, or dispute has arisen. If the protest is not resolved by mutual agreement, the department shall issue a written decision on the protest within 30 days after the receipt of the protest. In issuing the final decision, the decision must:

(a) state the reason for the action taken by the department with regard to the contract; and

(b) inform the aggrieved party of the party's right to pursue judicial action under Title 18, chapter 1, part 4, MCA.

(3) "Days" mean calendar days as defined in ARM 2.5.201.

(4) Any agency which exercises delegated authority from the department to engage in purchasing activities is responsible for responding to a protest or contested case hearing concerning the solicitation, award, or administration of a contract within their authority. (History: Sec. 18-4-221 MCA; IMP, Sec. 18-4-221 and 18-1-402 MCA; NEW, 1994 MAR p. 2814, Eff. 10/28/94; AMD, 1997 MAR p. 193, Eff. 1/28/97; AMD, 1997 MAR p. 1816, Eff. 10/7/97.)

2.5.407 STANDARDS OF RESPONSIBILITY (1) Among factors that may be considered in determining whether the standard of responsibility has been met are whether a prospective contractor:

(a) has available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability to meet all contractual requirements;

(b) has a satisfactory record of integrity;

(c) is qualified legally to contract with the agency;

(d) has not failed to supply any necessary information in connection with the inquiry concerning the responsibility; and

(e) has a satisfactory record of past performance. Nothing shall prevent the procurement officer from establishing additional responsibility standards for a particular procurement, provided that these additional standards are set forth in the solicitation.

(2) A prospective contractor must supply information requested by the procurement officer concerning the responsibility of the contractor. If the contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible.

(3) The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

(a) evidence that the contractor possesses the necessary items;

(b) acceptable plans to subcontract for the necessary items; or

(c) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

(4) If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding must be prepared by the procurement officer. The determination must be made part of the procurement file and a copy of the determination mailed to the affected bidder or offeror. (History: Sec. 18-4-221 MCA; IMP, Sec. 18-4-308 MCA; NEW, 1995 MAR p. 1788, Eff. 9/15/95.)

Sub-Chapter 5

General Bid Provisions

2.5.501 SPECIFICATIONS (1) Specifications shall clearly describe the state's requirements and allow for the obtaining of a supply or service which is adequate and suitable for the State's needs in a cost effective manner. Specifications may take into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs and shall permit maximum practicable competition consistent with this purpose.

(2) Specifications shall, to the extent practicable, emphasize functional or performance criteria and limit design or other detailed physical descriptions to those necessary to meet the needs of the state. To facilitate the use of the criteria an agency shall attempt to include as a part of their requisitions the principal functional or performance needs to be met and any compatibility requirements.

(3) In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

(4) Brand name items or descriptions may be used to indicate standards of quality, performance and/or use desired.

(5) Restrictive specifications shall not be used unless no other manner of description will suffice. In that event, a written determination shall be made that it is not practicable to use a less restrictive specification.

(6) A specification for a specific brand of supplies or equipment may be used if the requesting agency has a documented need to maintain a standard of performance and compatibility with existing supplies, equipment or staff experience.

(7) The suggested format for specifications is as follows:

(a) Name of commodity;

(b) Purpose/Use for commodity;

(c) Description of commodity;

(i) Each item of the description should fulfill a functional or physical requirement.

(ii) If brand names are necessary to indicate quality levels, list an acceptable brand name.

(iii) Justification shall be provided and attached if a single brand is necessary.

(iv) Justification shall be provided and attached if the commodity is to be a sole source purchase.

(d) Description of other requirements, such as warranty, training, parts, manuals, service, etc.

(e) Description of any unusual conditions, such as installation, field tests, fiscal year funding source, etc.

(f) Date commodity is to be delivered. (On the average,

an agency can expect delivery 60 to 90 days after submitting a requisition to purchasing; however, vendor delivery schedules vary dramatically from product to product.)

(g) Location where commodity is to be delivered.

(h) Name, address and phone number of agency contact person.

(i) Receiving procedures (if testing, sampling or other evaluation will be performed when commodity is delivered to determine acceptability) must be described. (History: Sec. 18-4-232 MCA; IMP, Sec. 18-4-231 through 18-4-234 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1985 MAR p. 244, Eff. 3/15/85; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 2814, Eff. 10/28/94.)

2.5.502 BID AND CONTRACT PERFORMANCE SECURITY (1) The state may, at its discretion, require bid and/or contract performance security for the procurement of services and supplies.

(2) Bid and contract performance security requirements must be stated in the invitation for bids or the request for proposals.

(3) The preferred types of security are bonds as described in 18-4-312(3)(a) and cash as described in 18-4-312(3)(c) and (d), MCA. The security must be payable to the state of Montana and the contract performance security must remain in effect for the entire contract period.

(a) If a certificate of deposit, money market certificate, cashier's check, certified check, irrevocable letter of credit, bank money order, or bank draft is determined to be acceptable, it must be issued from a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation or that is drawn and issued by a credit union insured by the national credit union share insurance fund.

(b) Irrevocable letters of credit in excess of \$100,000 will not be accepted as security for contracts.

(c) Facsimile copies of bid or contract security are not acceptable.

(4) Factors to consider in requiring bid security and in determining the amount of the security include:

(a) type of commodity;

(b) past state experience;

(c) labor required to perform contract;

(d) materials required to perform contract.

(5) All bid security, except bonds, will be returned to the unsuccessful bidders within 30 days from date of the award.

(6) Factors to consider in requiring contract performance security and in determining the amount of security include:

- (a) type of commodity;
 - (b) past state experience;
 - (c) labor required to perform contract;
 - (d) materials required to perform contract;
 - (e) amount and number of subcontracts;
 - (f) damages chargeable to the state if the contractor defaults;
 - (g) estimated dollar amount of total contract.
- (7) All performance security, except bonds, will be returned to the successful bidder upon completion of the contract, or at the discretion of the procurement official as documented to assure contract completion, or warranty period as declared within the contract. (History: Sec. 18-4-221 MCA; IMP, Sec. 18-1-201 and 18-4-312 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1986 MAR p. 242, Eff. 2/28/86; AMD, 1987 MAR p. 1961, Eff. 10/30/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 2814, Eff. 10/28/94; AMD, 1995 MAR p. 1788, Eff. 9/15/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97.)

2.5.503 PUBLIC NOTICE (1) Invitation for bids and requests for proposals shall be mailed, posted electronically, or otherwise furnished to a sufficient number of bidders or offerors required to secure competition.

(2) In the interest of economy, notices of availability of invitations for bids and requests for proposals may be mailed as provided in (1) and/or advertised as provided in (4) instead of the complete invitation or request.

(3) Where appropriate the state may require payment of a fee or a deposit for supplying the invitation for bids or request for proposals.

(4) In the event that it is either not practicable or not advantageous to the state to furnish bids to all the bidders listed on the central bidders list for a specific supply or service, the purchasing agency may elect to shorten a bidders list by selecting a sample of bidders. (History: Sec. 18-4-221 MCA; IMP, Sec. 18-4-303 and 18-4-304 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1985 MAR p. 244, Eff. 3/15/85; AMD, 1987 MAR p. 1961, Eff. 10/30/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1997 MAR p. 1816, Eff. 10/7/97.)

2.5.504 COST PRINCIPLES (IS HEREBY REPEALED) (History: Sec. 18-4-225 MCA; IMP, Sec. 18-4-225 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; REP, 1997, MAR p. 1816, Eff. 10/7/97.)

2.5.505 MISTAKES AND MINOR VARIATIONS IN BIDS AND OFFERS

(1) The procurement officer may allow a bidder or offeror to correct minor mistakes in a bid or offer if the mistake is clearly not attributed to an error in judgment, and the mistake and the intended correct bid are clearly evident on the form of the bid document. Examples of correctable mistakes include, but are not limited to:

- (a) typographical errors;
- (b) errors in extending unit prices;
- (c) transposition errors;
- (d) arithmetical errors; and
- (e) signature omitted.

(2) The procurement officer may permit a bidder or offeror to withdraw a low bid or proposal if:

(a) a mistake is clearly evident on the face of the document but the intended correct information is not similarly evident; or

(b) the bidder or offeror submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

(3) The division administrator of the procurement and printing division or designee may waive minor variations in a bid or offer. (History: Sec. 18-4-221 MCA; IMP, Sec. 18-4-303 and 18-4-304 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1988 MAR p. 1521, Eff. 7/15/88; AMD, 1995 MAR p. 1788, Eff. 9/15/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97.)

2.5.506 ANTICOMPETITIVE PRACTICES (IS HEREBY REPEALED)

(History: Sec. 18-4-221 MCA; IMP, Sec. 18-4-314 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; REP, 1990 MAR p. 1770, Eff. 9/14/90.)

2.5.507 PREQUALIFICATION OF VENDORS

(1) Vendors may be prequalified for particular types of supplies and services under the following conditions:

(a) a need exists to limit a solicitation to those vendors who meet statutory or licensing requirements applicable to the solicitation; or

(b) a need exists to minimize the time necessary to verify vendor qualifications which otherwise would jeopardize the timely award of contracts.

(2) The documentation for vendor prequalification must reflect the capability of the selected vendor(s) to adequately perform the contract. The criteria for prequalification include, but are not limited to, technical expertise, experience, quality of performance, location, availability, rates, prices, financial stability, past performance, catalogs, or other criteria relevant to a particular procurement.

(3) Prequalification must be approved by the division.

(4) Prequalification of a prospective vendor does not necessarily represent supply or service acceptability or a finding of responsibility. (History: Sec. 18-4-221 MCA; IMP, Sec. 18-4-309, MCA; NEW 1997 MAR p. 1816, Eff. 10/7/97.)

Sub-Chapter 6

Types of Bids

2.5.601 COMPETITIVE SEALED BIDS (1) "Sealed bid" is the preferred method of competitive procurement for state supply contracts and service contracts estimated to exceed the amount designated in ARM 2.5.603 as a small purchase or a limited solicitation. Sealed bids shall be solicited with an invitation for bid.

(2) The invitation for bid shall include the following:

(a) Instructions and information to bidders concerning the bid submission requirements, including the time and date established for bid opening, the address of the office to which bids are to be delivered, and any other special information;

(b) The purchase description, delivery or performance schedule, and any inspection and acceptance requirements not included in the purchase description; and

(c) The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

(3) The invitation for bid may incorporate documents by reference if the invitation for bid specifies where such documents can be obtained.

(4) Addenda, if any, will be provided to all vendors who received an invitation for bid, or notice of the addenda will be placed in the electronic format designated for giving public notice.

(5) Upon receipt of a bid or a facsimile transmission of a bid, an employee of the agency other than the procurement officer will cause it to be time-stamped and stored in a secure place until the time and date set for bid opening.

(6) Bids shall be opened publicly at the time, date and place designated in the invitation for bid. The name of each bidder, the bid price, and such other information as is deemed appropriate by the procurement officer shall be available for public inspection.

(7) The division may request state agencies to perform tests or to provide technical expertise to determine product or service acceptability on bids received.

(8) Following determination of product acceptability, if any is required, bids will be evaluated to determine which bidder offers the lowest cost to the state in accordance with the evaluation criteria set forth in the invitation for bids and the preference provisions described in ARM 2.5.403. Examples of such criteria include, but are not limited to, transportation cost, and life cycle cost formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall:

(a) be reasonable estimates based upon information the state has available concerning future use; and

(b) treat all bids equitably.

(9) Nothing in this rule shall be deemed to permit contract award to a bidder submitting a higher quality item than that designated in the invitation for bid if such bidder is not also the lowest bidder as determined under (8).

(10) Multiple award contracts are allowable if determined to be in the best interest of the state.

(11) The discretion of the division or the head of a purchasing agency, will be used to resolve tie bids not resolved by the provisions of 18-1-111, MCA. If no permissible methods will be effective in discouraging tie bids and a written determination is made so stating, award may be made by drawing lots. If collusion is suspected records shall be made of all invitations for bid on which tie bids are received showing the following information:

(a) the identification number of the invitation for bids;

(b) the supply or service; and

(c) a listing of all the bidders and the prices submitted.

A copy of such records shall be sent to the attorney general's office.

(12) A supplier's currently advertised or established catalog price, which is available to the public, may be accepted as a bid subject to the following conditions:

(a) The advertisement or established catalog price must be received and time-stamped by the procurement officer authorized to enter into contracts prior to or at the bid opening. In no event will catalog or advertised prices be accepted after a bid opening.

(i) A copy of the catalog or advertised price and specifications may be attached to the requisition received by the procurement official; or

(ii) The procurement official or the requesting agency may locate catalog or advertised prices; or

(iii) A vendor may submit catalog or advertised prices as a bid.

(b) The catalog or advertised price must meet or exceed the specifications, terms, and conditions and be the lowest acceptable bid.

(13) The currently advertised or established catalog price is tabulated and recorded as a bid from the supplier for the inspection of all bidders.

(14) Only the procurement official of the division or purchasing agency can make the final determination of acceptance or rejection of the bids or publicly advertised or established catalog prices.

(15) The division or using agency may use federal supply schedules established by the general services administration as one source of a bid. The federal supply schedule item must meet or exceed the specifications, terms, and conditions of the invitation for bid and must be the lowest acceptable bid in order to be selected. The pertinent supply schedule must be recorded as a bid from the supplier for the inspection of all bidders. (History: Sec. 18-4-221 MCA; IMP, Sec. 18-4-303 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1986 MAR p. 242, Eff. 2/28/86; AMD, 1987 MAR p. 1961, Eff. 10/30/87; AMD, 1987 MAR p. 2144, Eff. 11/28/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 383, Eff. 2/25/94; AMD, 1995 MAR p. 1788, Eff. 9/15/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97.)

2.5.602 COMPETITIVE SEALED PROPOSAL (1) "Competitive sealed proposal" is a procurement option allowing the award to be based upon stated criteria or evaluation factors. Competitive sealed proposals may be practical when one or more of the following conditions exist:

(a) the contract needs to be other than a fixed-price type;

(b) oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposal;

(c) offerors may need to be afforded the opportunity to revise their proposal, including prices;

(d) award may need to be based upon a comparative evaluation as stated in the request for proposals of differing price, quality, and contractual factors in order to determine the most advantageous offering to the state. Quality factors include technical and performance capability and the content of the technical proposal; and

(e) the primary consideration in determining award may not be price.

(2) The request for proposals must be prepared in accordance with ARM 2.5.601 (2) through (4) and must also include:

(a) a statement that discussions may be conducted with one or more offerors who submit proposals, but that proposals may be accepted and a contract issued without such discussions; and

(b) the relative importance of evaluation factors.

(3) Facsimile transmission of a proposal is only acceptable on an exception basis with prior approval of the procurement officer.

(4) Proposals shall not be opened publicly but shall be opened in the presence of a procurement official. Proposals shall be time-stamped upon receipt and held in a secure place by an employee of the agency until the established due date. Proposals shall be shown only to persons participating in the evaluation or contracting process.

(5) After the date established for receipt of proposals, a register of proposals shall be prepared which shall include the name of each offeror. The register of proposals shall be open to public inspection only after award of the contract.

(6) The evaluation shall be based on the evaluation factors set forth in the request for proposals. Numerical rating systems may be used but are not required. Factors not specified in the request for proposal shall not be considered.

(7) For the purpose of conducting discussions, proposals shall be initially classified as:

(a) responsive; or

(b) non-responsive.

(8) Discussions may be held with one or more offerors to:

(a) promote understanding of the state's requirements and the offerors' proposals; and

(b) facilitate arriving at a contract that will be most advantageous to the state taking into consideration all factors set forth in the request for proposals.

(c) Discussions may include oral presentations, interviews, demonstrations, responses to specific questions, modifications, and negotiations. Offerors shall not be informed of their rank at the time of discussions.

(d) One or more offerors may be provided an opportunity to submit a best and final offer.

(9) References and the credit and financial responsibility of the offerors may be verified as appropriate.

(10) The department reserves the right to negotiate with one or more offerors for the award of a contract that is most advantageous to the state. The department reserves the right to award a contract without negotiations or to reject any or all proposals.

(11) All proposal documents are available for public inspection after the contract is executed, except for trade secrets as defined by the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA.

(12) Interested parties are responsible for making their own arrangements to make copies of proposal materials.

(13) Multiple award contracts are allowable if determined to be in the best interest of the state. (History: Sec. 18-4-221 MCA; IMP, Sec. 18-4-304 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1985 MAR p. 244, Eff. 3/15/85; AMD, 1987 MAR p. 1961, Eff. 10/30/87; AMD, 1987 MAR p. 2144, Eff. 11/28/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1995 MAR p. 1788, Eff. 9/15/95; AMD, 1997 MAR p. 193, Eff. 1/28/97; AMD, 1997 MAR p. 1816. Eff. 10/7/97.)

2.5.603 SMALL PURCHASES OR LIMITED SOLICITATIONS OF SUPPLIES AND SERVICES

(1) The division or state agency may procure supplies or services costing \$5,000 or less using a purchase technique that best meets the agency's needs.

(2) The division or state agency, if authorized in a written delegation agreement, may procure supplies or services costing between \$5,001 and \$15,000 using a limited solicitation procedure. This procedure requires a minimum of three viable written or oral quotations, if available. The limited solicitation procedure must be documented and, wherever practical, use the department's vendor list.

(3) This rule does not apply to controlled items purchased through exclusive term contracts, requisition time schedules, the central stores program or the publications and graphics bureau unless specifically delegated in a written delegation agreement to the agency.

(4) Procurements shall not be artificially divided or sequenced to avoid using the other source selection methods set forth in Title 18, chapter 4, MCA. (History: Sec. 18-4-221 MCA; IMP, Sec. 18-4-305 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1985 MAR p. 244, Eff. 3/15/85; AMD, 1986 MAR p. 242, Eff. 2/28/86; AMD, 1987 MAR p. 1961, Eff. 10/30/87; AMD, 1987 MAR p. 2144, Eff. 11/28/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 383, Eff. 2/25/94; AMD, 1995 MAR p. 2241, Eff. 11/1/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97.)

2.5.604 SOLE SOURCE PROCUREMENT (1) The provisions of this rule apply to all sole source procurements of \$5,000 or greater unless exigency procurements described in ARM 2.5.605 are necessary.

(2) Sole source procurement is not permissible unless a required item is available from only a single supplier. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror for that item. The following are examples of circumstances which could necessitate sole source procurement:

(a) The compatibility of equipment, accessories, or replacement parts is the paramount consideration; or

(b) There is no existent equivalent product.

(3) For purchases greater than \$5,000, the determination as to whether a procurement shall be made as a sole source shall be made by the division, unless specifically authorized in a written agency delegation agreement. In cases of reasonable doubt, competition should be solicited. A request by a state agency to the division that a procurement be restricted to one vendor must be accompanied by a written justification.

(4) The procurement officer may conduct negotiations, as appropriate, as to price, delivery, and terms.

(5) For the purpose of complying with 18-4-306, MCA, a record of sole source procurements greater than \$5,000 shall be maintained by the procuring agency that lists:

- (a) each vendor's name;
- (b) the amount and type of each contract;
- (c) a listing of the supplies or services procured under each contract; and
- (d) the identification number of each contract file.

(6) The following items do not require sole source justification and shall be purchased directly by the agency regardless of delegated authority:

- (a) licenses;
- (b) dues to associations;
- (c) renewal of software license agreements; or
- (d) purchase or renewal of software or hardware maintenance agreements. (History: Sec. 18-4-221 MCA; IMP, Sec. 18-4-306 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1987 MAR p. 1961, Eff. 10/30/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 383, Eff. 2/25/94; AMD, 1995 MAR p. 2241, Eff. 11/1/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97.)

2.5.605 EXIGENCY PROCUREMENTS (1) An exigency procurement of \$5,000 or greater shall be limited to those supplies or services necessary to meet the exigency, as defined in ARM 2.5.201.

(2) The determination as to whether a procurement shall be made as an exigency procurement shall be made by the agency. The determination must be in writing and must state the basis for an exigency procurement and for the selection of a particular vendor.

(3) The procedure used shall be selected to assure that the required supplies or services are procured in time to meet the exigency. However, such competition as is practicable shall be obtained.

(4) A record of each exigency procurement shall be made as soon as practicable and shall set forth:

- (a) the vendor's name;
- (b) the amount and type of the contract;
- (c) a listing of the supplies or services procured under the contract; and
- (d) the written documentation required in (2). (History: Sec. 18-4-221 MCA; IMP, Sec. 18-4-133 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1985 MAR p. 244, Eff. 3/15/85; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 2481, Eff. 10/28/94; AMD, 1997 MAR p. 193, Eff. 1/28/97.)

2.5.606 PROCUREMENT OF USED EQUIPMENT (1) Purchase of used equipment is allowable if in the best interest of the state.

(2) Unless justified as sole source or exigency, the award of the contract will be made by identifying the requirements and proceeding with the competitive bidding or proposal process, pursuant to ARM 2.5.601.

(3) Criteria to consider in making this determination include:

(a) consideration of the type, use and life expectancy of new versus used equipment;

(b) comparing the purchase price of new and used equipment;

(c) comparing the price and general condition of used equipment among several vendors;

(d) consideration of the freight charges and FOB point;

(e) investigation of manufacturer or brand and availability of warranty, maintenance, and parts;

(f) clarification of payment terms. (History: Sec. 18-4-221 MCA; IMP, Sec. 18-4-221 MCA; NEW, 1986 MAR p. 242, Eff. 2/28/86; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 2481, Eff. 10/28/94.)

2.5.607 PROCUREMENT FROM SHELTERED WORKSHOPS OR WORK ACTIVITY CENTERS (1) State agencies may purchase supplies and services from sheltered workshops as defined in 18-5-101, MCA. Such purchases are exempt from competitive bidding laws and rules and may be made directly.

(2) The division will maintain a list of certified sheltered workshops or work activity centers, as defined in 18-5-101, MCA, located in the state. The list will include the supplies and services provided by each. The list will be available to user agencies. (History: Sec. 18-5-102 MCA; IMP, Sec. 18-5-102 and 18-5-103 MCA; NEW, 1986 MAR p. 242, Eff. 2/28/86; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1995 MAR p. 1788, Eff. 9/15/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97.)

Sub-Chapter 7

Surplus Property

2.5.701 AUTHORITY TO DISPOSE OF SUPPLIES (1) State agencies may not transfer, sell, trade, or otherwise dispose of supplies owned by the state without written authorization of the property and supply bureau. A department or legislative or judicial entity may transfer surplus supplies between the various units of that department or legislative or judicial entity.

(2) State agencies shall notify the division's property and supply bureau of all surplus supplies on forms available at the bureau. The entity may suggest a dollar value per item or per lot, but the suggestion does not constitute the minimum sale or transfer amount. The figures are not public information prior to transfer or sale. (History: Sec. 18-4-226 MCA; IMP, Sec. 18-4-226 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1990 MAR p. 1770, Eff. 9/14/90.)

2.5.702 DISPOSITION OF SURPLUS SUPPLIES (1) The division's property and supply bureau shall transfer surplus supplies to other State agencies and other units of government.

(2) Surplus supplies must be offered to the public through competitive sealed bids, public auction, established markets, or posted prices. It is recognized, however, that some types and classes of items can be sold or disposed of more readily and advantageously by other means, including barter. In such cases and also where the nature of the supply or unusual circumstances call for its sale to be restricted or controlled, the division may employ such other means, including appraisal, if the division makes a written determination that such procedure is advantageous to the state. On sales greater than \$300, only United States postal money orders, certified checks, cashier's checks or business checks may be accepted.

(3) Competitive sealed bidding:

(a) If a sale is to be made by competitive sealed bidding, notice of the sale must be given at least ten days before the date set for opening bids by:

(i) mailing a request for sale bids to prospective bidders, including those bidders on lists maintained at the property and supply bureau for this purpose; and

(ii) newspaper advertisement may also be used.

(b) The request for sale bids must list the supplies offered for sale; designate their location and how they may be inspected; and state the terms and conditions for bid opening. Bids shall be opened publicly.

(c) Award must be made in accordance with the provisions of the request for sale bids to the highest responsive and responsible bidder, if the price offered by such bidder is acceptable to the division. If the price is not acceptable, the division may:

(i) reject the bids in whole or in part and negotiate the sale, but the negotiated sale price must be higher than the highest responsive and responsible bidder's price; or

(ii) resolicit bids.

(4) Auctions: Supplies may be sold at auction. When appropriate, an experienced auctioneer should be used to cry the sale and assist in preparation of the sale. The solicitation to bidders should stipulate all the terms and conditions of any sale.

(5) Established markets: Established markets are places where supplies such as livestock and produce are regularly sold in wholesale lots, and prices are set by open competition. Surplus supplies may be sold in established markets for such supplies.

(6) Posted prices: Surplus supplies may be sold at posted prices as determined by the division when such prices are based on fair market value and the sale is conducted pursuant to written procedures established by the division.

(7) Trade-ins: Surplus supplies may be traded-in only if the division determines the trade-in value is expected to equal or exceed the value estimated to be obtained through the sale or other disposition of the supplies.

(8) The state may permit local governments, non-profit organizations, or private businesses to participate in an auction or other appropriate marketing methods. (History: Sec. 18-4-226 MCA; IMP, Sec. 18-4-226 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1997 MAR p. 193, Eff. 1/28/97.)

Sub-Chapter 8

Federal Surplus Property Program

2.5.801 ADOPTION OF STATE PLAN OF OPERATION - FEDERAL SURPLUS PROPERTY (1) As authorized by section 18-5-202, MCA, the department of administration (hereinafter department) hereby adopts and incorporates by reference the "State of Montana, Federal Surplus Property Plan of Operation in Compliance with 41 FR 101-44 and Public Law 94-519" (referred herein as the State Plan of Operation) promulgated by the department and filed with the general services administration of the United States government on July 1, 1977, and as revised March 19, 1984, pursuant to section 201(j)(4) of the Federal Property and Administrative Services Act of 1949 (40 USC 484). The state plan of operation establishes the operating procedure and practices to be followed by the department for the fair and equitable distribution of federal surplus personal property to those units of state and local government and certain nonprofit, tax-exempt, educational and health institutions as are determined to be eligible to receive such surplus personal property under section 203(j) of the act. Copies of the state plan of operation may be obtained from the Department of Administration, Procurement and Printing Division, P.O. Box 200137, Helena, Montana 59620-0137. (History: Sec. 18-5-202 MCA; IMP, Sec. 18-5-202 MCA; NEW, 1984 MAR p. 956, Eff. 6/29/84; AMD, 1995 MAR p. 2241, Eff. 11/1/95.)